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I certify that a copy of the foregoing document to which this certificate is attached, was mailed to the attorney(s) of record of the defendant(s) on the 12th day of Sept, 2002
United States Attorney

By: Colleen Bernier

CC: TO JUDGE PM

Judge Robert S Lasnik

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

SCOTT J. CLANCY,

Defendant.

NO. CR02-0046L

GOVERNMENT'S SENTENCE
MEMORANDUM AND
RECOMMENDATION

COMES NOW the United States of America, by and through John McKay, United States Attorney for the Western District of Washington, and Janet Freeman, Assistant United States Attorney for said District, and submits the Government's Sentence Recommendation in the above-captioned matter.

A. OFFENSE LEVEL COMPUTATION

The Government concurs with the offense level computation made by the Probation Office (PSR, para. 29-40). Pursuant to the Plea Agreement, the parties stipulated the loss in this case -- for the purpose of computing the applicable sentencing range -- to be \$218,886.68.

1 **1. Relevant Conduct – Loss Figures and Restitution Amounts:**

2 The Government adopts the Victim Loss/Restitution figures presented in the attachments
 3 to the Presentence Report. However, some downward modification to restitution is warranted,
 4 due to the fact the Government has verified that some victims did not suffer actual losses. For
 5 example, in some cases the bank was able to “freeze” the fraudulent proceeds of counterfeit
 6 checks before funds actually “walked” out the door. Accordingly, the fraud loss incurred by each
 7 victim is itemized as follows, along with an accounting of restitution owed to each person:

	<u>Fraud-Related Losses</u>	<u>Outstanding Restitution</u>
8 Losses related to Counts 1 through 13	\$175,575.41	175,576.36
10 Losses related to Counts 14 through 17	20,748.96	-0-
11 Metropolitan Federal Savings (Bad checks)	8,878.82 ¹	-0-
12 Discover Bank (re: John Sandor credit card)		982.82
13 Ruth Geren Visa	567.44	-0-
14 Magnolia Garden Center	109.26	109.26
15 Bargreen-Ellingson	180.04	180.04
16 Ballard Bookcase Co. (SPD #00-425490)	453.94	453.94
17 Garden of Distinction (SPD #00-378234)	449.34	449.34
18 Max Anderson – bad check	157.02	157.02
19 James and Helen Turner (SPD #00-003701)		
20 Check-Masters	1,775.00	1,775.00
U.S. Bank	270.17	270.17
21 William Norwind Visa (US Capitol Police)	3,371.95	39.00
22 Patrick Prisco AMEX (US Capitol Police)	6,349.33	6,349.33
23 TOTAL	\$218,886.68	\$186,342.28

24 ¹ The defendant wrote several bad checks on a closed account at Metropolitan Federal Savings
 25 Bank (now known as Washington Federal Savings). The bank confirms it did not incur a loss in respect
 26 of these checks, in that the bank did not process them once it was determined the account had been
 27 closed. Instead, the bank rerouted these checks to the merchants and vendors who originally accepted
 28 them at the point of sale. Consequently, the merchant-vendors suffered the actual loss of funds,
 products, or services in each case. Due to the volume of bad checks, it was determined not to be an
 efficient use of law enforcement resources to track down every merchant and verify the actual amount of
 outstanding restitution. For this reason, restitution appears as \$0.00 for this line item.

1 It bears mentioning the defendant sent several bad checks to the victim-credit card
2 companies, purportedly to create the appearance he was bringing current his past due accounts
3 and to convince the companies to keep open his lines of credit. Over a five month period (March
4 through July 1999), he sent 15 checks, totaling \$130,192.00, to First USA, Capitol One,
5 American Express, and Pitney Bowes Bank. The check amounts ranged from \$5,000 to \$20,000
6 per check. The defendant wrote these checks on a business account *after* it had been closed. The
7 bank did not honor these checks and returned them to the credit card companies as unpayable.
8 The credit card balances remain outstanding to date.

9 The dollar amount representing these bad checks was not included in the computation of
10 harm, under U.S.S.G. Section 2F1.1, as it may have constituted a possible double-counting.
11 Because the defendant's criminal history and fraudulent pattern have involved the use of bad
12 checks, closed account checks, forged checks, and counterfeit checks, this conduct demonstrates
13 yet another mode of fraudulent behavior. Not only did the defendant defraud the credit card
14 companies in the first instance, but he intended to further his fraud and keep open his lines of
15 credit by submitting checks exceeding \$130,000, when he knew his bank account had been closed
16 for some time.

17 The Government respectfully requests a finding of fraud loss in the amount of
18 **\$218,886.68**, and a finding of restitution in the amount of **\$186,342.28**.

19 **2. Specific Offense Characteristics:**

20 The Government concurs with the Probation Office's upward adjustment by two levels,
21 pursuant to Section 2F1.1(b)(2), U.S.S.G., for more than minimal planning.

22 The Government further supports the Probation Office's upward adjustment by another
23 two levels, pursuant to Section 2F1.1(b)(5)(C)(i), because the offense involved the unauthorized
24 transfer or use of any means of identification to produce or obtain any other means of
25 identification (i.e., credit card accounts).

3. **Adjusted Offense Level and Total Offense Level:**

The Adjusted Offense Level is 19. After adjusting downward by three levels for acceptance of responsibility, the Total Offense Level is 16.

B. **CRIMINAL HISTORY SCORE**

The Government concurs with the Criminal History calculations made by the Probation Office. The defendant has a total of five criminal history points, which establish a Criminal History category of III.

C. **SENTENCING RANGE**

The applicable sentencing range is 27-33 months.

D. **SENTENCING RECOMMENDATION**

The Government recommends a term of incarceration of thirty-two (32) months and seven (7) days. The high end of the range is appropriate in light of the defendant's prior criminal history, the extent and nature of his fraud, and the number of stolen identities he used to perpetrate his deceptive behavior. Ordinarily, the Government would have recommended the highest point of the range, i.e., 33 months. Here, however, the defendant spent three weeks in King County Jail after making his initial appearance in this district on the instant case. His stint in county jail followed the issuance of a bench warrant in connection with another Seattle-area fraud involving CheckMasters and U.S. Bank. That fraud occurred in 2000. (PSR, para. 62.)

Ultimately, the King County Prosecuting Attorney agreed to dismiss that case if the loss amounts were included as restitution in the federal case. This we agreed to do, and we incorporated such loss amounts into our computations.

By statute, it appears the defendant is not entitled to credit for time served during the three weeks. In the interest of fairness, however, the Government does not oppose a reduction in the sentence to account for the amount of time the defendant spent in county jail.

The Government also recommends a five-year term of supervised release, upon the defendant's release from imprisonment, subject to the standard conditions as well as the thirteen special conditions of supervision listed in the attachments to the Presentence Report.

1 The Government recommends the payment of restitution in the amount of **\$186,342.28**,
2 and we suggest the Court waive interest on restitution.

3 We do not recommend the imposition of a fine. However, the \$600.00 special assessment
4 should be paid immediately into the Crime Victims Fund.

5 Dated this 12th day of September, 2002.

6 Respectfully submitted,

7 JOHN McKAY
8 United States Attorney

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11 JANET FREEMAN
12 Assistant United States Attorney
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